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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 UNITED STATES of AMERICA and THE
25 STATE of CALIFORNIA, *ex rel.*,
26 SHELBY EIDSON,

27 *Plaintiffs,*

28 vs.

AURORA LAS ENCINAS LLC, LINDA
PARKS, SIGNATURE HEALTHCARE
SERVICES LLC, AND DOES 1 THROUGH
10, jointly and severally,

Defendants.

Case No.: 2:10-cv-1031 JAK (RZx)

RELATOR'S EX PARTE
APPLICATION TO
COMPEL DEFENDANTS'
IMMEDIATE COMPLIANCE
WITH PRIOR COURT ORDERS
AND FOR RECONSIDERATION
OF RELATORS' MOTION TO
EXTEND TIME FOR FACT
DISCOVERY

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Pursuant to Federal Rules of Civil Procedure 16 and Local Rule 7-19,
3 Relator/Plaintiff Shelby Eidson, hereby applies ex parte for an order compelling defendants'
4 immediate compliance with prior Court orders and for reconsideration of Relator's motion to
5 extend time for fact discovery.

6 Good cause exists for this request. 1) On March 29, 2013, defendants Hospital and
7 Signature filed a motion for summary judgment. Their exhibits, filed under seal, were
8 delivered to Relator's counsel by mail today, April 1, 2013. To meaningfully and
9 substantively oppose defendants' motion for summary judgment, Relator requires documents
10 defendants have been ordered to produce, but have failed to produce, and requires the
11 deposition of Dr. Soon K. Kim and P. Blair Stam. (See Dkt. no. 385, filed March 29, 2013).
12 2) Judge Zarefsky granted in part both of Relator's motions to compel discovery. Dkt. Nos.
13 159 & 250. The parties have met and conferred repeatedly regarding the inadequacy of the
14 Hospital and Signature's document production. The Hospital and Signature have produced
15 documents piecemeal, and as recently as January 31, 2013, with Defendants' Fifth
16 Supplemental Responses to Plaintiff's Requests for Production, Set One. Still, however, the
17 Hospital and Signature have failed to produce all of the responsive documents ordered by
18 Judge Zarefsky. 3) The deposition schedule was extremely contested by Defendants, who
19 employed numerous delaying tactics in an effort to prevent Relator from deposing witnesses.
20 Indeed, mere days before the court's discovery cut-off date, defendants refused to present
21 two of the most important witnesses, Dr. Soon Kim, who owns both the Hospital and
22 defendant Signature, and Blair Stam, Vice President of Signature. Among other things, these
23 individuals are the persons likely most knowledgeable of alleged fraudulent billing practices
24 and worthless services provided by both the Hospital and Signature. 4) Preventing Relator
25 from seeking additional patient charts unreasonably kettles her ability to present the extent of
26 Defendants' worthless services to a jury and unfairly prejudices the federal and state
27 governments in their ability to recoup all taxpayer money which a jury may find to have been
28

1 fraudulently billed by defendants.

2 This application is made ex parte because of the immediacy of opposing defendants'
3 motion for summary judgment filed March 29, 2013. Relator's need for a modification of the
4 scheduling order and an extension to oppose defendants' motion for summary judgment is
5 clearly emergent because her case would be greatly prejudiced if she were 1) unable to
6 obtain documents ordered produced by defendants and 2) unable to depose Dr. Kim and Mr.
7 Stam. The application is made in good faith and with no improper purpose. Relator has
8 timely and diligently attempted to obtain the documents and the completed depositions but,
9 due to factors outside of her control, has been unable to do so. Thus, the Court is respectfully
10 requested to consider this Application on an ex parte basis and for the reasons set forth
11 above.

12 This ex parte application is based on this Notice, the attached Memorandum of Points
13 and Authorities, the Declaration of Colleen Flynn, all pleadings and papers on file herein, all
14 matters of which the Court may take judicial notice, and such oral argument as the Court
15 might entertain at a hearing on this application.

16 Relator has notified defendants that she would be filing this ex parte application.
17 Counsel for defendants are Debra Spicer, Alan Gilchrist and Patric Hooper. Pursuant to L.R.
18 7-19, counsel's business contact information is as follows:

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16 DATED: April 1, 2013

17 **COLLEEN FLYNN**
18 **MARK KLEIMAN**
19 **DISABILITY RIGHTS LEGAL CENTER**

20 By /s/ Colleen Flynn
21 Colleen Flynn
22 Attorney for Plaintiff/Relator
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff/Relator Shelby Eidson applies ex parte for an order modifying the scheduling order and compelling Defendants Aurora Las Encinas Hospital, LLC (“Hospital”) and Signature Healthcare Services, LLC, (“Signature”) to comply with Magistrate Judge Zarefsky’s prior court orders dated January 19, 2012, Order on Discovery Motions, Dkt. no. 159 and August 28, 2012, Final Order on Plaintiff’s Motion to Compel, Dkt. no. 250.

The orders explicitly require defendants to produce, with certain restrictions, patient records and other documents responsive to Relator’s Requests for Production, Set One. Furthermore, defendants’ supplemental responses to Relator’s requests for production on multiple occasions stated they would be submitting their discovery responses “in the near future.” (Hospital and Signature Second & Third Supp. Responses to Plaintiff’s Requests for Production, Set One).

The parties have met and conferred repeatedly regarding the inadequacy of the Hospital and Signature’s document production. The Hospital and Signature have produced documents piecemeal, and as recently as January 31, 2013, with Defendants’ Fifth Supplemental Responses to Plaintiff’s Requests for Production, Set One. Still, however, the Hospital and Signature have failed to produce all of the responsive documents ordered by Judge Zarefsky.

Relator’s good faith efforts to obtain the Hospital and Signature’s voluntary compliance with the Court’s orders and their discovery obligations have been met with resistance and uncooperative behavior. No extensions have been requested by defendants and they have offered no explanation to the Court to justify noncompliance. Yet defendants have simply refused to comply.

Defendants should not be rewarded for their recalcitrant behavior throughout the discovery process.

Accordingly, Relator seeks two forms of relief, on an expedited basis:

- An order compelling immediate compliance; and

- An order extending relator's time for fact discovery in light of the 'scorched earth' defense she is being forced to overcome.

As requested in her "Ex Parte Application to Compel the Previously Noticed Percipient Witness Depositions of Dr. Soon K. Kim and P. Blair Stam," Dkt. no. 385, Relator also seeks to complete the depositions of P. Blair Stam, Executive Vice-President of Signature, and Dr. Soon K. Kim, sole owner of both Signature and the Hospital. Dr. Kim and Mr. Stam are both on the board of directors of the Hospital; the board is the top of the chain of command at the Hospital, above the CEO.

Relator sought to bring this matter before Judge Zafefsky. However, after this Court denied Relator's application to modify the scheduling order, Dkt. no. 338, Judge Zarefsky denied Relator's Ex Parte Application for Order Shortening Time to Have Motion to Compel Heard. Dkt. no. 359, filed 3.20.13. However, Judge Zarefsky denied the application not on the merits of the motion to compel, but because the joint stipulation for the motion compelling discovery was not provided to him. Relator's counsel requests the opportunity to present to Judge Zarefsky her portion of the joint stipulation for a motion to compel production of documents he already ordered defendants to produce. Relator's portion of the joint stipulation is attached as Exhibit A to the declaration of Colleen Flynn, filed herewith.

These documents and depositions are required to substantively and meaningfully oppose defendants' motion for summary judgment. Defendants have refused to produce both the documents and deponents despite Relator's timely and diligent attempts to obtain defendants' compliance. In light of the March 15, 2013 discovery cut-off, judicial intervention is required.

Relator furthermore requests the Court reconsider its denial of Relator's Ex Parte Application for an Order Modifying the Scheduling Order. Dkt. no. 338. On March 7, 2013 Relator acknowledges that she did not include in that application the history of defendant's disobedience to prior court orders and its obstruction of lawful discovery because these were not the sole reasons she sought such an extension and, had that application been granted, Relator would have taken this issues up with Magistrate Judge Zarefsky and not this Court. Relator, however, must now ask this Court to reconsider its ruling of March 20, 2013 (Dkt. 338), denying her application. Relator seeks reconsideration because without it the

1 defendants' willful obstruction will be allowed to effectively nullify court orders and will
 2 thwart the strong public policy that cases, and especially cases like this one, ought be
 3 decided on their merits. Relator apologizes for any inconvenience it has caused the Court in
 4 having to reconsider this question, but submits this instant motion in an effort to address the
 5 Court's concerns as stated in the March 20, 2013 ruling.

6 Preventing Relator from seeking additional patient charts unreasonably kettles her
 7 ability to present the extent of Defendants' worthless services to a jury and unfairly
 8 prejudices the federal and state governments in their ability to recoup all taxpayer money
 9 which a jury may find to have been fraudulently billed by defendants.

10 **II. LEGAL STANDARD.**

11 A party "may obtain discovery regarding any matter, not privileged, that is relevant to the
 12 claim or defense of any party." Fed. R. Civ. P. 26(b)(1). This phrase, "relevant to the subject
 13 matter involved in the pending action," has been broadly construed to include any matter that
 14 bears on, or that could reasonably lead to other matters that bear on any issue that is or may
 15 be in the case. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

16 The Ninth Circuit has recognized that, "[t]he district court may modify the pretrial
 17 schedule 'if it cannot reasonably be met despite the diligence of the party seeking the
 18 extension.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). A
 19 court's scheduling order may be modified upon a showing of "good cause," an inquiry that
 20 focuses on whether the moving party has been reasonably diligent. Fed.R.Civ.P.16(b); *Noyes*
 21 *v. Kelly Servs.*, 488F.3d 1163,1174 n.6 (9th Cir. 2007) (citing *Johnson*, 975 F.2d at 609).

22 "When considering a motion for leave to take additional discovery after the cut-off, the court
 23 shall consider all relevant factors, including: (1) the moving party's diligence; (2) the
 24 foreseeability of the need for additional discovery; (3) the trial schedule; (4) any response
 25 from non-moving and third parties; (5) the likelihood that the discovery will lead to relevant
 26 evidence; and (6) any prejudicial effect." *Optimumpath, LLC v. Belkin Int'l, Inc.*, No. 09-
 27 1398, 2010 WL 4279501, at*2, citing *Tyco Thermal Controls LLC v. Redwood Indus.*, No.
 28 06-7164, 2010 WL 2353533, at *2 (N.D. Cal. June 9, 2010).

Under Rule 56(f), if a party cannot present by affidavit "facts essential to justify the

1 party's opposition" to a motion for summary judgment, the district court "may order a
2 continuance to permit affidavits to be obtained or depositions to be taken or discovery to be
3 had or may make such other order as is just." Fed.R.Civ.P. 56(f). " 'A party must show how
4 additional discovery would preclude summary judgment and why the party cannot
5 immediately provide "specific facts" demonstrating a genuine issue of material fact.' " *United*
6 *States v. One 1985 Mercedes*, 917 F.2d 415, 418 (9th Cir.1990) (quoting *Mackey v. Pioneer*
7 *Nat'l Bank*, 867 F.2d 520, 524 (9th Cir.1989)).

8 The primary purpose of Rule 56(f) is to ensure that parties have a reasonable
9 opportunity to prepare their case and to ensure against a premature grant of summary
10 judgment. *Price v. General Motors Corp.*, 931 F.2d 162, 164 (1st Cir.1991) (citing to 10A
11 Wright, Miller & Kane, Federal Practice & Procedure Sec. 2740 (1983)). District courts will
12 appropriately refuse to grant a continuance if the parties have not diligently pursued
13 discovery. *Hawaii Carpenters' Trust Funds v. Henry*, 906 F.2d 1349 (9th Cir.1990) (no
14 continuance where during eleven month discovery period party made one attempt to contact
15 employees, received a response, and failed to follow up and depose the employee); *United*
16 *States v. Bob Stofer Oldsmobile Cadillac*, 766 F.2d 1147, 1152-53 (7th Cir.1985) (denial of
17 continuance appropriate where appellant does not seek continuance until one month after
18 discovery cut off and fails to explain why dilatory); *Landmark Dev. Corp. v. Chambers*
19 *Corp.*, 752 F.2d 369, 372 (9th Cir.1985) (denial of continuance appropriate where appellants
20 had reasonable access to information during ten month discovery period and failure to take
21 depositions was due to appellants' own delay). As shown *infra*, Relator has diligently sought
22 to obtain documents and schedule and complete depositions. Nevertheless, Relator is faced
23 with the emergency of not having all documents ordered disclosed and not having been able to
24 complete the depositions of two of the most important witnesses in her case. This
25 outstanding discovery, pending from before the discover cut-off, is absolutely necessary to
26 help prove Relator's allegations, defend against defendants' counter-claims against Relator,
27 and to submit a meaningful and substantive opposition to Defendants' Hospital and
28 Signature's Motion for Summary Judgment.

1 **III. ARGUMENT.**

2 **a. Defendants' refusal to produce witnesses and documents constitutes an**
 3 **emergency, necessitating modification of the scheduling order.**

4 Relator's need for a modification of the scheduling order and an extension to oppose
 5 defendants' motion for summary judgment is clearly emergent because her case would be
 6 greatly prejudiced if she were unable to obtain documents ordered produced by defendants
 7 and unable to depose Dr. Kim and Mr. Stam. This discovery is necessary to 1) oppose
 8 defendants' motion for summary judgment, 2) prove the allegations in Relator's Fourth
 9 Amended Complaint, and 3) to defend against counterclaims defendants have brought
 10 against Relator. Dkt. no. 219.

11 **b. Relator has diligently sought to obtain documents and testimony prior to**
 12 **the discovery cut-off date.**

13 On September 20, 2011, Plaintiff served on Defendants her Requests for Production
 14 of Documents, Set One. In light of defendants' recalcitrance at producing documents,
 15 Relator has actively litigated the disclosure of patient charting and billing records responsive
 16 to those Requests (See Dkt. Nos. including 184, 204, 241), resulting in several orders from
 17 this Court in Plaintiff's favor. (Dkt. Nos. 213, 250, and 264.) When defendants still failed to
 18 produce all documents Relator met and conferred with defendants resulting in their further
 19 production of documents as recently as January 31, 2013, with Defendants' Fifth
 20 Supplemental Responses to Plaintiff's Requests for Production, Set One. Defendants served
 21 their Third Supplemental Responses on October 17, 2012 and their Fourth Supplemental
 22 Responses on January 23, 2013.

23 Relator also diligently sought to obtain the completed depositions of Dr. Kim and Mr.
 24 Stam. For a detailed account of Relator's attempts, see Ex Parte to Compel Previously
 25 Noticed Depos of Dr. Kim and Mr. Stam, Dkt. No. 385, filed 3.29.13.

26 **c. Delay Caused by defendants.**

27 While Relator acknowledges that her request for modification of the scheduling order
 28 was only recently submitted to the Court, said request was submitted *prior to* the discovery

1 cut-off date. Dkt. no 338, filed March 7, 2013. Relator made repeated efforts to avoid
2 burdening the Court with such requests by first seeking documents from and to schedule
3 depositions with defendants. Defendants repeatedly represented that such production
4 responses "were coming soon." However, when it became clear that defendants had no
5 intention to present certain witnesses or documents, Relator was forced to seek an extension
6 of the discovery period. While the parties have previously stipulated to modify the
7 scheduling order, this is the first such request Relator has made.

8 Relator agrees with this Court that the case has faced constant delays since being
9 unsealed in late 2010. However, Relator asserts that such delays have been caused by
10 defendants who have bombarded the Court and Relator with moving target motions to
11 dismiss on a rolling basis. A considerable amount of Relator's time has been spent not only
12 responding to repetitive and meritless motions, but also on constantly pursuing Court orders
13 to force defendants to produce documents and witnesses. (See Judge Zarefsky Order
14 Denying Defendant Parks Motion for Protective Order, Dkt. No. 337; Order on Discovery
15 Motions, Dkt. no. 159 and August 28, 2012, Final Order on Plaintiff's Motion to Compel,
16 Dkt. no. 250).

17 **d. Relator has sufficiently demonstrated that documents and testimony**
18 **withheld by Defendants is critical to her ability to present her case.**

19 Defendants have not only failed to provide Relator with documents as ordered by the
20 Court, they have utilized such documents in several depositions. That is, defendants provided
21 select sections from patient charts *never provided to Relator*, and questioned witnesses as to
22 such documents. For example, in the February 28, 2013 deposition of Mark Cline,
23 defendants asked Mr. Cline to review treatment planning documents pertaining to Patient 56.
24 Prior to this deposition, Relator had not been provided a single document from this Patient's
25 chart. Likewise, during the March 1, 2013 deposition of Kimberly Cabrera, Relator's mother,
26 defendants presented select documents from two other patient's charts: Patient 34 and Patient
27 19. The charting documents provided to Mr. Cline and Mrs. Cabrera during their depositions
28 were not bates stamped, as further evidence that they were never provided to Relator.

1 To allow defendants to present evidence in depositions that they have been ordered to
2 produce to Relator but have not is fundamentally flawed. In such a scenario, defendants are
3 in possession of key evidence that Ms. Eidson cannot possibly dispute or review because she
4 has never received it. How could Relator possibly provide a meaningful response to
5 defendant's claims if she is denied access to the evidence they are based upon? Furthermore,
6 the fact that defendants have produced such documents during depositions indicates that: 1)
7 defendants have identified and redacted such documents; 2) defendants have utilized such
8 documents to mount a defense against Ms. Eidson's claims, and 3) which begs the question:
9 Why haven't defendants produced these documents to Relator, especially since already being
10 ordered to do so by Judge Zarefsky?

11 Indeed, even the small sampling of patient charts pertaining to Patients 19, 34, and 56
12 presented by defendants during the aforementioned depositions revealed the exact problems
13 that Relator alleged in her FAC. For example, in her FAC, Ms. Eidson alleges that Patient 56
14 did not receive adequate treatment planning, which is required by the Medicare program.
15 When asked about Patient 56's charting documents, presented by defendants during
16 deposition, Mark Cline, a former Nursing Supervisor at defendant Hospital, stated that the
17 charting documents he viewed were indeed blank and incomplete. When asked if it was
18 "normal for all these spaces to be blank in a treatment plan?," Mr. Cline replied: "Everything
19 is supposed to be filled in on the left side and the right side, yeah." (Cline Dep., p.55, line 4-
20 12).

21 When asked if it was policy at Las Encinas for treatment plans to be completed after
22 discharge, Mr. Cline replied that it "happened quite frequently." Mr. Cline even admitted that
23 he would often go to the Medical Records department to complete treatment plans on
24 patients long after they had discharged. ("I would go to medical records and complete them
25 after the fact, after the patient left.") (Cline Depo, p. 52, line 15-17).

26 Clearly, in withholding such documents, defendants seek to gain an unfair advantage
27 against Relator because they realize that the evidence in their possession reveals her
28 allegations to be true.

1 Furthermore, Defendants have failed to produce not only patient records but memos
 2 as well as complaints, occurrence reports, and kronos sheets with complaints written by
 3 Relator. See, for example, Plaintiff's Request for Production No. 12, "Any and all writings to
 4 or from Shelby Eidson or referring to or relating to Shelby Eidson;" Order on Discovery
 5 Motions, (Dkt. No. 159), regarding Request No. 12: "the motion is granted;" and December
 6 13, 2012 meet and confer letter to Defendants, page 2, filed under seal, Dkt. no. 358. In fact,
 7 Defendants Aurora and Signature have turned over very few internal memos, including
 8 memos to and from Defendant Parks, yet claim to have turned over all they have.

9
 10 **e. Relator is entitled to all documents Judge Zarefsky ordered produced.**

11 Relator does not dispute that defendants, after many months, submitted a substantial
 12 number of documents. However, the mere fact that Defendants turned over substantial
 13 documents does not mean they have turned over *all required documents*. Relator is entitled
 14 to all documents Defendants were ordered to produce, not just a "substantial" portion of such
 15 documents. For example, regarding patient documents defendants were ordered to turn over,
 16 Patient 52 was at the hospital for over a year, and thus her chart is voluminous and
 17 substantially longer than others. Simply because defendants turned over some charts does not
 18 render it unnecessary for Relator to access *all* charts pertaining to patients referenced in the
 19 FAC.

20 **f. Relator should have the opportunity to seek additional patient charts.**

21 Relator requests the Court reconsider its denial of Relator's request to seek additional
 22 patient charts. Because even limited documents defendants have produced substantiate
 23 Relator's claims that defendants have provided grossly sub-standard care and worthless
 24 services to patients at the Hospital, Relator should have the opportunity to seek additional
 25 patient charges. As recently obtained documents from the Los Angeles County of Mental
 26 Health show, issues alleged in Relator's complaint continue to the present at Aurora Las
 27 Encinas Hospital. Preventing Relator from seeking additional patient charts unreasonably
 28 kettles her ability to present the extent of Defendants' worthless services to a jury and

1 unfairly prejudices the federal and state governments in their ability to recoup all taxpayer
2 money which a jury may find to have been fraudulently billed by defendants.

3
4 **g. Good cause exists for a modification of the scheduling order.**

5 Good cause exists in the instant matter because (1) defendants refused, mere days before
6 the court's designated discovery cut-off date, to present two witnesses noticed well before the
7 discovery cut-off date; (2) defendants have failed to provide critical documents as ordered by
8 Judge Zarefsky (defendants have thus far provided a mere eleven (11) charts to Relator); (3)
9 numerous depositions were only recently completed and their corresponding transcripts have
10 only recently arrived or have yet to arrive; (4) in order for Plaintiff's expert to give an
11 adequate expert report relating to the depositions taken, and, (5) Relator simply cannot
12 submit a meaningful response to defendants' Summary Judgment Motion without collecting
13 the aforementioned evidence.

14 To meet Rule 16's 'good cause' standard, the movant may be required to show: (1) that
15 [the movant] was diligent in assisting the [C]ourt in creating a workable Rule 16 [O]rder; (2)
16 that [the movant's] noncompliance with a Rule 16 deadline occurred or will occur,
17 notwithstanding [the movant's] diligent efforts to comply, because of the development of
18 matters which could not have been reasonably foreseen or anticipated at the time of the Rule
19 16 scheduling conference; and (3) that [the movant] was diligent in seeking amendment of
20 the Rule 16 [O]rder, once it became apparent that [the movant] could not comply with the
21 [O]rder." *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999); *Cf. Parkway*
22 *Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*, 116 F.R.D. 363, 365-
23 66 (M.D.N.C.1987) ("Good cause" is shown where there are "extenuating circumstances.").

24 Therefore, the 'good cause' standard is met where, as here, the moving party was faced
25 with an unforeseeable impediment to completing discovery (when, mere days before the cut-
26 off, defendants refused to produce two of the persons most knowledgeable of Relator's
27 allegations).

28 Defendants' refusal to fully comply with the magistrate's order or present witnesses

1 for deposition simply could not have been reasonably foreseen as defendants did not make
 2 the decision to deny Relator access to these witnesses until mere days before the discovery
 3 cut-off date.

4 Although the discovery cutoff date has passed, ordering immediate compliance with
 5 previous orders and modifying the scheduling order is reasonable under the circumstances.
 6 "All federal courts are vested with inherent powers enabling them to manage their cases and
 7 courtrooms effectively and to ensure obedience to their orders." *F.J. Hanshaw Enters., Inc.*
 8 *v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001) (citing *Chambers v.*
 9 *NASCO, Inc.*, 501 U.S. 32, 43-44 (1991)). "These powers are "governed not by rule or
 10 statute but by the control necessarily vested in courts to manage their own affairs so as to
 11 achieve the orderly and expeditious disposition of cases."" *ODS Techs., L.P. v. Magna*
 12 *Entm't Corp.*, 583 F. Supp. 2d 1141, 1143 n.1 (C.D. Cal. 2008) (quoting *Chambers*, 501 U.S.
 13 at 43). Because a Court may "enforce compliance with its lawful orders through civil
 14 contempt," *Distribs. Ass'n Warehousemen's Pension Trust v. Foreign Trade Zone 3, Inc.*, No.
 15 C05-1161 SBA, 2009 WL 975786, at *1 (N.D. Cal. Apr. 9, 2009) (citing *Shillitani v. United*
 16 *States*, 384 U.S. 364, 370 (1966)), it may also take any action short of civil contempt
 17 reasonably within the scope of its inherent powers to achieve compliance with its Orders.

18 **h. Relator Has Shown Good Cause for Continuing the Hearing on**
 19 **Defendants' Motion for Summary Judgment.**

20 Defendants Hospital and Signature filed a motion for summary judgment
 21 March 29, 2013, set for hearing on April 29, 2013, the last day to hear motions under the
 22 Court's current Scheduling Order. The voluminous exhibits to Defendants motion for
 23 summary judgment were filed under seal and not received by Relator's counsel until today,
 24 April 1, 2013. The current schedule leaves Relator a mere week to prepare her opposition.
 25 Defendants' filing date of their motion for summary judgment violates this Court's Standing
 26 Order that states, "Whenever possible, the party moving for summary judgment should
 27 provide more than the minimum twenty-eight (28) day notice for motions." Furthermore,
 28 because Relator not only needs to take the depositions of Dr. Kim and Mr. Stam to be able to
 submit a meaningful and substantive opposition to Defendants' motion, she also needs

1 access to documents in defendants possession that they have been ordered to disclose but
 2 have refused to do so. The Court, therefore, should therefore continue the hearing on
 3 Defendants' motion. *Rux v. Starbucks Corp.*, 2007 WL 273917 at*1.

4 **IV. CONCLUSION.**

5 As discussed above, the Court's prior discovery orders should be enforced. A
 6 reasonable extension of fact discovery, an extension to oppose defendants' motion for
 7 summary judgment and the establishment of new dates for expert discovery are necessary to
 8 give effect to these orders. The Court should continue the hearing on defendants' motion for
 9 summary judgment until after documents have been produced and the depositions of Dr. Kim
 10 and Mr. Stam are completed.

11 Respectfully submitted,

12 DATED: April 1, 2013

13 **COLLEEN FLYNN**
 14 **MARK KLEIMAN**
 15 **DISABILITY RIGHTS LEGAL CENTER**

16 By /s/ Colleen Flynn
 17 Colleen Flynn
 18 Attorney for Plaintiff/Relator
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